## OPINIONS BELOW

The opinion of the trial court (R. V1. 1, P. 38) is unreported, but is printed in the appendix hereto. The opinion of the Supreme Court of Louisiana (R. V1. 2, P. 128) is reported at _____ La. _____, 226 So.(2d) 494, and is also set forth in the appendix hereto.

## JURISDICTION

This suit was filed by two residents, citizens and taxpayers of the Lake Charles Harbor and Terminal District against the Governor of the State of Louisiana seeking to have Article XIV, Section 30.2(b) of the Constitution of the State of Louisiana declared illegal and unconstitutional under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and seeking to enjoin the Governor from filling a vacancy existing on the Board of Commissioners of the District under the procedure set out in that constitutional provision. (R. V1. 1, P. 4) The trial court declared the provision unconstitutional, and the defendant and intervenors appealed to the Supreme Court of Louisiana. The Supreme Court of Louisiana, the highest court of the State of Louisiana, reversed the trial court and held that the constitutional provision in question was valid. Articles 591 through 597, inclusive, of the Louisiana Code of Civil Procedure authorize the filing of class actions. The right of the plaintiff to prosecute the suit is not contested.

The Supreme Court of the State of Louisiana initially rendered its decision on the 9th day of June, 1969. (R. V1. 2, P. 128) Application for rehearing was timely filed by the present appellants on the 20th day of June, 1969 (R. V1. 2,

P. 142), and said application for rehearing suspended the finality of the decision of the Louisiana Supreme Court until that court denied the application for rehearing on the 8th day of October, 1969. Louisiana Code of Civil Procedure, Articles 2166, 2167.

Notice of appeal to the Supreme Court of the United States was timely filed by appellant in the Supreme Court of the State of Louisiana, on the 10th day of December, 1969. (R. V1. 2, P. 188)

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, U.S. Code Annotated, Section 1257(2), which provides that final judgments or decisions of the highest court of a state in which a decision could be had may be reviewed by the Supreme Court by appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity. The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment of the Louisiana Supreme Court on direct appeal in this case:

*Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964);

*Avery v. Midland County, Texas, et al*, 390 U.S. 474, 88 S.Ct. 1114 (1968);

*Kramer v. Union Free School District*, _____ U.S. _____, 89 S.Ct. 1886 (1969);

*Cipriano v. City of Houma, et al*, _____U.S._____, 89 S.Ct. 1897 (1969).

The provision of the Louisiana Constitution, the validity of which is attacked, Article XIV, Section 30.2(b) of the Louisiana Constitution of 1921, is printed in the appendix hereto.

## QUESTION PRESENTED

The following question is presented by the present appeal:

Whether or not the method of appointment to the membership of the Board of Commissioners of the Lake Charles Harbor and Terminal District as provided by Section 30.2(b) of Article XIV of the Louisiana Constitution of 1921 is unconstitutional under the Fourteenth Amendment of the United States Constitution, being in violation of the equal protection clause of said amendment. The constitutional provision under attack provides that the governing authority of the district shall consist of a board of commissioners of five (5) members, and that vacancies on the board of commissioners of the district shall be filled by the governor of the State of Louisiana from a list of three nominees submitted successively by the American Rice Growers Cooperative Council (AFL-CIO), the Lake Charles Maritime Association, the Greater Lake Charles Chamber of Commerce and the West Calcasieu Chamber of Commerce as one organization, and the state senator and representatives in the state legislature representing the Parish of Calcasieu. The question presented is whether or not a method of appointment to such a board which limits the governor's power of appointment to panels of names submitted by private organizations deprives petitioners as taxpayers, electors and residents within the district, and others similarly situated, of equal protection of the law under the Fourteenth Amendment to the Federal Constitution. It is not contended that the governor could not be accorded the right of appointment, but it

is contended that a limitation of this right to panels of three names submitted by special groups is invidious and constitutionally impermissible.

## STATEMENT OF THE CASE

Appellants, residents, citizens and taxpayers of the Parish of Calcasieu, State of Louisiana, residing within the limits of the Lake Charles Harbor and Terminal District filed this suit against the Governor of the State of Louisiana seeking to have the trial court declare Article XIV, Section 30.2(b) of the Louisiana Constitution unconstitutional, and to enjoin the defendant from filling a vacancy existing on the board of commissioners of the district under the procedure set out in that constitutional provision.

As found by the Supreme Court of Louisiana (R. V1. 2, P. 128, 135) the harbor district is a political subdivision of the State of Louisiana with fixed territorial limits. LSA-R.S. 34:201. The governing authority of the harbor district is vested in a board of commissioners, and the method of selection of the board is set forth in Article XIV, Section 30.2(b), Louisiana Constitution of 1921, the constitutional amendment in question. The board may regulate the commerce and traffic of the harbor district; it may provide light, water and police protection for the district and for all harbor and terminal facilities situated therein; it may make and collect reasonable charges for the use of all structures, works and facilities administered by the Board, and for any and all services rendered by it; it may regulate, reasonably, the fees and charges to be made by privately owned wharves, docks, warehouses, elevators, and other facilities within the limits of the district when the same are offered for the use of the public; it may borrow

funds for the business of the district; it may levy and collect taxes; it may mortgage properties constructed or acquired by the district, and it may mortgage and pledge any lease or leases and the rents, income, and other advantages arising out of any lease or leases granted, assigned or subleased by it; it may incur debt and issue bonds for its needs in the manner provided by the constitution and laws of the State of Louisiana. LSA-R.S. 34:203. The Board controls and regulates the exports and imports passing through the port district and the number of arrivals and departures of vessels and their tonnage. LSA-R.S. 34:205. The Board may acquire by purchase, donation, expropriation, lease or otherwise, any and all lands in the district needed for railways, warehouses, docks, wharves, sheds, buildings, canals, channels, slips, basins, and other facilities to be owned and operated by the board or to lease to others for manufacturing, commercial and business purposes to promote the industrial development of the district, and it may provide for the payment of such land out of the funds under its control not otherwise specially appropriated. LSA-R.S. 34:206. The board may make or construct any of the works of public improvement in the district and anything in connection therewith that may be necessary or useful for the business of the board. LSA-34:207. The board may let contracts. LSA-R.S. 34:208. The board may, when necessary, levy annually an ad valorem tax not to exceed two and one-half (2½) mills on the dollar of the property subject to taxation situated in the district. All funds derived under this section may be used for any expenses or purposes of the board. LSA-R.S. 34:209. The board has the right to borrow money and issue certificates of indebtedness. LSA-R.S. 34:209. The board is authorized to incur debt and issue negotiable bonds. LSA-R.S. 34:210. The board may levy taxes to pay for bonds,

and in default of payment may have property subject to said taxes sold at tax sale. LSA-R.S. 34:211. The board may issue refunding bonds. LSA-R.S. 34:214. The board has the right to examine and investigate all questions relating to the interest and welfare of the district, to control and regulate the same, and make an annual report to the governor showing all receipts and disbursements of the board. LSA-R.S. 34:205.

The plaintiffs filed their petition on December 30, 1968. (R. V1. 1, P. 4) They alleged that the term of office of a member of the board of commissioners of the Lake Charles Harbor and Terminal District had expired, and that under the constitutional amendment the governor had to appoint a new board member of the district from a list of three nominees submitted to him by the central office of the American Rice Growers Cooperative Association at Lake Charles, Louisiana, a private membership organization. It was plaintiffs' contention that the harbor district with its powers as hereinabove set forth directly affected them and their welfare, and that the denial to them of any voice in the selection of members deprived them of equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the United States Constitution. Pertinent allegations of their petition showing the existence of a federal question recite:

> "The plaintiff has absolutely no voice or choice in the selection of the nominees who are named by the American Rice Growers Cooperative Association at Lake Charles, Louisiana, or the other private membership organizations listed in said constitutional amendment of which he is not a member, and from which nominees the Governor must select a member of the Board of Commissioners of Lake Charles Harbor and Terminal District to expend the taxes

paid by plaintiffs and others to administer the affairs of the district." (R. V1. 1, P. 5)

"Said constitutional amendment involves a Constitutional agency empowered to levy, and actually levying property taxes upon residents and taxpayers living within the area of the district to provide construction of essential facilities, and for the operation and maintenance of these facilities, neither the American Rice Growers Cooperative Association at Lake Charles, Louisiana, nor the other private organizations represent a political group of any kind, or a group authorized by the Constitution and laws of the United States and the State of Louisiana to exercise any kind of public functions, directly or indirectly; and that for these reasons and other reasons shown below, said Constitutional Amendment is illegal and unconstitutional in denying to plaintiff and other taxpayers similarly situated the due process and equal protection which is insured by the Constitution of the United States (particularly, the Fourteenth Amendment thereto) and the Constitution of the State of Louisiana." (R. V1. 1, PP. 5, 6)

The American Rice Growers Cooperative Association at Lake Charles, Louisiana, the Lake Charles Maritime Association, the Greater Lake Charles Chamber of Commerce, the West Calcasieu Chamber of Commerce, Jesse M. Knowles, A. C. Clemons, Jr., Harry M. Hollins, Robert G. Jones, William L. McLeod, Jr., William S. Boyd and Conway LeBleu filed interventions asserting the constitutionality of Section 30.2(b). (R. V1. 1, P. 22)

The trial court rendered judgment (R. V1, 1, P. 38) in favor of plaintiffs and against defendant and intervenors. It found that the harbor district was more than an administrative body, and posed the question of whether the selective

process of the constitutional amendment in question is so arbitrary and invidious as to deny plaintiffs equal protection of the laws. The trial court answered the question as follows:

> "The answer must be in the affirmative. These plaintiffs, and the class they represent, have absolutely no choice in the selection of the board members who have the right to tax them. This is indeed taxation without representation. Four of the five members are selected from a panel of names submitted by private organizations completely beyond and immune to the elective process. The Governor who makes the final selection does not even have a choice. He must select one from the panel submitted by the nominating groups." (R. V1, 1, P. 44)

The trial court also held that the case of *Sailors v. Board of Education of County of Kent*, 387 U.S. 105, 87 S.Ct. 1549, relied upon by defendants and intervenors was not applicable.

The Supreme Court of Louisiana, in a written opinion, reversed and set aside the judgment of the trial court, concluding that Article XIV, Section 30.2(b) of the Constitution was constitutional, and that plaintiffs had suffered neither discrimination nor denial of equal protection of the laws. The court also concluded that the district is an administrative body and that *Sailors v. Board of Education of the County of Kent*, supra, was applicable. (R. V1, 2, P. 128) The plaintiffs timely filed an application for rehearing (R. V1. 2, P. 142) which was denied on October 8, 1969 (R. V1. 2, P. 183). One of the associate justices was of the opinion that a rehearing should be granted. See 226 So.(2d) 464, at page 502.

On December 19, 1969, plaintiffs filed notice of appeal to this court. (R. V1, 2, P. 188)

## THE FEDERAL QUESTIONS ARE SUBSTANTIAL

In effect Article XIV, Section 30.2(b) of the Louisiana Constitution grants a franchise to the members of the American Rice Growers Cooperative Association, Lake Charles & Vicinity Central Trades and Labor Council (AFL-CIO), the Lake Charles Maritime Association, the Greater Lake Charles Chamber of Commerce and the West Calcasieu Chamber of Commerce acting as one organization, all of which are private organizations, to participate in and limit the governor's power of appointment rather than allowing the governor to choose for appointment any qualified citizen from among the thousands inhabiting the area.

It is the appellants' position that a method of appointment which limits the governor's power of appointment to panels of names submitted by private organizations deprives appellants, and others similarly situated, equal protection of the law under the Fourteenth Amendment. It is not contended that the governor has no right to appoint, but that a limitation of this right to panels submitted by special groups is invidious and constitutionally impermissible.

In *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964), this court declared:

> "* * * Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic and civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. * * *"

*Reynolds v. Sims*, supra, applied the equal protection clause to the apportionment of state legislatures. In *Avery v. Midland County Texas*, 390 U.S. 474, 88 S.Ct. 1114 (1968), the court held that the Fourteenth Amendment likewise forbids the election of local government officials from districts of disparate population. In so holding the court declared:

> "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the state.
>
> " 'Thus the prohibitions of the Fourteenth Amendment extend to all action of the state denying equal protection of the laws; whatever the agency of the state taking the action. * * *' Cooper v. Aaron, 358 U.S. 1, 17, 78 S.Ct. 1401, 1049, 3 L.Edition 2d 5 (1958).
>
> "Although the forms and functions of local government and the relations among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment. The actions of the local government are the action of the state. A city, town or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law."

This court has not retreated from the principles established in *Reynolds* and *Avery*. Recent cases have moved in the direction of tightening the standards applicable to the selection of public officials, and to state statutes which contain classifications selectively distributing the franchise. *Morris H. Kramer v. Union Free School District No. 15, et al*, _____ U.S._____; 89 S.Ct. 1886 (1969); *Cipriano v. City of Houma, et al*, _____U.S._____; 89 S.Ct. 1897 (1969).

*Kramer* involved a New York Statute providing for the method of election of school board members rather than a method of appointment. However, this court pointed out that "any unjustifiable discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government." The court said in that case:

> " 'In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances of the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. WILLIAMS V. RHODES, 398 U.S. 23, 30 (1968). And, in this case, we must give the statute a close and exacting examination. '[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.' REYNOLDS V. RHODES, supra, at 31; WESBERRY V. SANDERS, 376 U.S. 1, 17 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government."

In the *Kramer* case the plaintiff, a bachelor, contended that Section 2012 of the New York Education Law was unconstitutional. The legislation provided that in certain elections residents who were otherwise eligible to vote in state and federal elections could vote in school board elections only if they were (i) the owner or lessee of taxable real property located in the district, (ii) the spouse of one who owned or

leased qualifying property, or (iii) the parents or guardian of a child enrolled for a specified time during the preceding year in a local district school.

This court found that Section 2012 did violate the Equal Protection Clause of the Fourteenth Amendment. The court further in its decision pointed out the rigid examination to which any statute must be subjected concerning the selection of public officials, so that a determination can be made whether each resident citizen has, as far as possible, an equal voice in the selections. The court said:

> "Thus, state apportionment statutes, which may *dilute* the effectiveness of some citizens' votes, receive close scrutiny from this Court. REYNOLDS V. SIMS, supra. See AVERY V. MIDLAND COUNTY, 390 U.S. 494 (1968). No less rigid an examination is applicable to statutes *denying* the franchise to citizens who are otherwise qualified by residence and age. Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. See CARRINGTON V. RASH, supra, at 96.
>
> "And, for these reasons, the deference usually given to the judgment of legislators does not extend to decisions concerning which resident citizens may participate in the election of legislators and other public officials. Those decisions must be carefully scrutinized by the Court to determine whether each resident citizen has, as far as

possible, an equal voice in the selections. Accordingly, when we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a 'rational basis' for the distinctions made are not applicalbe. See HARPER V. VIRGINIA BD. OF ELECTIONS, 383 U.S. 633, 670 (1966). The presumption of constitutionality and the approval given 'rational' classifications in other types of enactments are based on an assumption that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality. And, the assumption is no less under attack because the legislature which decides who may participate at the various levels of political choice is fairly elected. Legislation which delegates decision-making to bodies elected by only a portion of those eligible to vote for the legislature can cause unfair representation. Such legislation can exclude a minority of voters from any voice in the decisions just as effectively as if the decisions were made by legislators the minority had no voice in selecting."

The court further pointed out that once the franchise is granted lines may not be drawn which are inconsistent with the Equal Protection Clause. In the present case although an appointment is made by the governor, a franchise has been granted to a limited number of private groups to designate the panels from which the governor must appoint.

In the *Kramer* case this court said the following which is here relevant:

"The need for exacting judicial scrutiny of statutes

distributing the franchise is undiminished simply because, under a different statutory scheme, the offices subject to election might have been filled through appointment. States do have latitude in determining whether certain public officials shall be selected by election or chosen by appointment and whether various questions shall be submitted to the voters. In fact, we have held that where a county school board is an administrative, not legislative, body, its members need not be elected. SAILORS V. KENT BD. OF EDUCATION, 387 U.S. 105, 108 (1967). However, *'once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.'* " (Emphasis supplied)

The Supreme Court of Louisiana held that the Lake Charles Harbor and Terminal District was an administrative body. Petitioners do not agree with this conclusion because of the broad power exercised by the district as set forth in the Statement of the Case, but in any event, under the *Kramer* decision this is immaterial, as shown by the following quotation:

"Nor is the need for close judicial examination affected because the district meetings and the school board do not have 'general' legislative powers. Our exacting examination is necessitated not by the subject of the election; rather, it is required because some resident citizens are permitted to participate and some are not. For example, a city charter might well provide that the elected city council appoint a mayor who would have broad administrative powers. Assuming the council were elected consistent with the commands of the Equal Protection Clause, the delegation of power to the mayor would not call for this Court's exacting review. On the other hand, if the city charter made the office of mayor subject

to an election in which only some resident citizens were entitled to vote, there would be presented a situation calling for our close review."

The above quotation also emphasizes the point that those participating in an appointment must be selected "consistent with the demands of the Equal Protection Clause."

Also significant to the present discussion is *Joseph Q. Cipriano v. City of Houma, et al*, _____U.S._____; 89 S.Ct., 1897 (decided June 16, 1969), wherein this court held that the provisions of Louisiana law giving only property taxpaying electors the right to vote in a utility bond election were unconstitutional. We quote the following from that case:

"As we noted in KRAMER ANTE, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it it to others, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' KRAMER V. UNION FREE SCHOOL DISTRICT NO. 15, ANTE, at 6. Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because 'the questions scheduled for the election need not have been submitted to the voters.' Id. at 8, n. 11."

Further in the same opinion the court said:

"The challenged statute contains a classification which excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the State's sole justification for the statute is that the classification provides a 'rational basis' for

> limiting the franchise to those voters with a 'special interest,' the statute clearly does not meet the 'exacting standards of precision we require of statutes which selectively distribute the franchise.' KRAMER V. UNION FREE SCHOOL DISTRICT NO. 15, ANTE, at 11. We therefore reverse the judgment of the District Court."

*Sailors v. Board of Education of the County of Kent*, supra, is inapposite to the case at bar. There, the membership of the county board was actually determined by the local board, and the local board members who in effect made the county board appointments, were elected. Furthermore, the functions of the county board in that case were very narrow, and almost limited to an advisory board, as opposed to the Lake Charles Harbor and Terminal District, which has very broad powers, as outlined above.

On the basis of the foregoing it is respectfully submitted that Section 30.2(b) of Article XIV of the Louisiana Constitution violates the equal protection clause of the Fourteenth Amendment in that it provides for a method of selection to public office which excludes participation by qualified citizens who are substantially affected and are as directly interested as those who are permitted to participate in the selection, and that such discrimination is without rational basis.

## CONCLUSION

The issues here are substantial; the federal questions presented are of great importance, and this court should give plenary consideration to this case to resolve the issues herein presented, with briefs on the merits and oral argument, and a final decision by this high court.

Respectfully submitted,

C. Alvin Tyler, Attorney for
Edmond J. Hamilton and
John L. Datenhoff
1730 Main Street
Baton Rouge, Louisiana

Of Counsel:

ROBERT E. MORGAN
Cormie & Morgan
616 Kirby Street
Lake Charles, Louisiana 70601

## PROOF OF SERVICE

I, C. ALVIN TYLER, one of the attorneys for EDMOND J. HAMILTON and JOHN L. DATENHOFF, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of_____, 19____, I served copies of the foregoing Jurisdictional Statement on the several parties to this appeal, by mailing copies in duly addressed envelopes, with first class postage prepaid, as follows:

To: JACK P. F. GREMILLION, Attorney General of the State of Louisiana, of counsel for appellant, John J. McKeithen, Governor of the State of Louisiana, State Capitol, Baton Rouge, Louisiana

To: KENNETH C. DeJEAN, Special Counsel, of counsel for John J. McKeithen, Governor of the State of Louisiana, Office of the Attorney General, State Capitol, Baton Rouge, Louisiana

To: WILLIE D. MAYOR, Assistant Attorney General, of counsel for appellant, John J. McKeithen, Governor of the State of Louisiana, Office of the Attorney General, State Capitol, Baton Rouge, Louisiana

To: SAM H. JONES, G. ALLEN KIMBALL and WILLIAM M. NOLEN, Attorneys for appellant, John J. McKeithen, Governor of the State of Louisiana, and attorneys for intervenor-appellant, American Rice Growers Cooperative Association of Lake Charles, Louisiana, Jones, Kimball, Harper, Tete & Wetherill,

Gulf National Bank Building, P. O. Box 910, Lake Charles, Louisiana 70601

To: EVERETT R. SCOTT, JR., attorney for intervenor-appellant, Lake Charles Maritime Association, Kaufman, Anderson, Leithead, Scott & Boudreau, 117 W. Broad Street, P. O. Box 1299, Lake Charles, Louisiana 70601

To: THOMAS L. RAGGIO, attorney for intervenor, Greater Lake Charles Chamber of Commerce, Hall, Raggio, Farrar & Barnett, Magnolia Building, Lake Charles, Louisiana 70601

To: THOMAS M. BERGSTEDT, Attorney for intervenor, West Calcasieu Chamber of Commerce, Scotfield, Cox & Bergstedt, 126 West Kirby Street, Lake Charles, Louisiana 70161

To: MEREDITH T. HOLT, attorney for intervenors, Jesse M. Knowles, A. C. Clemmons, Jr., Harry M. Hollins, Robert G. Jones, William L. McLeod, Jr., William S. Boyd, and Conway LeBleu, Holt and Woodley, Pioneer Building, Lake Charles, Louisiana 70601

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Attorney for Edmond J. Hamilton and John L. Datenhoff, Appellants
1730 Main Street
Baton Rouge, Louisiana

# OPINION OF THE TRIAL COURT

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| EDMOND J. HAMILTON, | : | NUMBER 131,429— |
| ET AL. | : | DOCKET 4 |
| | : | 19th JUDICIAL DIS- |
| VS. | : | TRICT COURT, PARISH |
| JOHN J. McKEITHEN, | : | OF EAST BATON ROUGE |
| GOVERNOR OF LOUISIANA | : | STATE OF LOUISIANA |

Plaintiffs, as taxpayers of the Parish of Calcasieu, residing within the territorial limits of the Lake Charles Harbor and Terminal District, hereinafter referred to as Harbor District, have brought this action seeking an injunction to prevent Governor John J. McKeithen from making an appointment to said Harbor District under the authority set forth in Article 14, Section 30.2(B) of the Constitution of the State of Louisiana, quoted below, to-wit:

> B. The governing authority of this district shall be a board of commissioners whose members shall be appointed by the governor and which shall be known as the Board of Commissioners of Lake Charles Harbor and Terminal District. The board shall consist of five members who shall be citizens of the United States and qualified voters and taxpayers, and inhabitants of said district during their terms of office. The commissioners shall serve overlapping terms, as established by Act No. 67 of 1924, of six years each. The present members shall continue to serve on the board for the duration of their respective

terms. Any vacancies in the membership of the board hereafter occurring by reason of expiration of the terms for which appointed, or by reason of death, resignation or otherwise shall be filled in the following manner:

(1). The first vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the central office of the American Rice Growers Cooperative Association at Lake Charles, Louisiana.

(2). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Lake Charles and Vicinity Central Trades & Labor Council, AFL-CIO, as one organization.

(3). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Lake Charles Maritime Association.

(4). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Greater Lake Charles Chamber of Commerce, and the West Calcasieu Chamber of Commerce acting as one organization.

(5). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the state senators and representatives in the legislature representing the parish of Calcasieu.

(6). Any further vacancies shall be filled in the same

order of rotation as shown in subsections (1) through (5) of Section B hereof.

(7). If now, or hereafter, one or more of the five organizations or groups set forth above has no commissioner on the board, the governor, the board, and the five organizations shall proceed to rectify this failure of representation of one or more groups by diverting, in case of a vacancy, from the order of appointments named hereinabove and by receiving nominations instead from the unrepresented organizations or groups, and then thereafter shall revert to the order of nominations and appointments, as set forth in subparagraphs (1) through (5) above, with the American Rice Growers Cooperative Association having first priority in submitting nominees to the governor, the Lake Charles and Vicinity Central Trades & Labor Council, AFL-CIO shall have second priority, the Lake Charles Maritime Association shall have third priority, the Greater Lake Charles Chamber of Commerce and the West Calcasieu Chamber of Commerce acting as one organization shall have fourth priority, and the Louisiana Legislators representing Calcasieu Parish shall have fifth priority. It is the intention of this language that the purpose of providing one commissioner for each organization shall be corrected and rectified at the earliest possible date, and at the time of the earliest possible vacancy. To facilitate this transition each of the five organizations shall, within 30 days after the promulgation of this amendment, notify both the governor and the board of commissioners whether it has, or has not been provided with a commissioner on the effective date of this amendment, with the name of such commissioner if it has one; and if it has none, it shall so certify such fact to the governor and to the board of commissioners.

(8). The organizations referred to in Subsection B above shall be understood and construed to be the five

organizations presently existing in the city of Lake Charles by the designated names, or their respective legal successors.

(9). If any one or more of the organizations referred to in Subsection B hereof ceases to exist or to function without any legal successor, then the nominees to be submitted to the governor by such organization shall instead be submitted by the state senators and representatives representing the parish of Calcasieu.

(10). In the event that for any reason the governor fails to receive three nominees for a given vacancy, as provided in Subsection B above, within sixty days after the expiration of the term of any member of the board or the occurrence of a vacancy on the board from any other cause, the governor shall proceed forthwith to make an appointment to fill such vacancy. The organization failing to submit such nominees shall lose its turn in the rotation.

(11). Any commissioner may be removed by the governor, but only for cause and on charges preferred against him in writing and after public hearing and proof of the sufficiency of such charges; provided that any commissioner so removed shall have the right to test in the courts the sufficiency of the charges and of the evidence tendered in support thereof.

(12). The commissioners shall serve without compensation and shall have the power to organize and reorganize legal, executive, engineering, clerical and other department and forces of the said board and to fix the duties, powers and compensation of all officers, agents and employees of said board.

Simply stated the governor must pick new members to

the Harbor District from a list of three nominees submitted to him from the various groups and organizations named in the amendment.

The Louisiana constitutional provision in question was adopted by vote of the people on November 5, 1968. It passed statewide and in the Parish of Calcasieu, and was duly promulgated to be effective December 14, 1968.

The Harbor District possesses many and varied powers and duties, LRS 34:201, et seq. It may acquire land by purchase, expropriation, and other means, LRS 34:206. It may construct any public improvement in the district that it deems necessary and useful, LRS 34:207. It may let contracts, LRS 34:208. It may charge fees, *levy ad valorem taxes* and borrow money, LRS 34:209. It may incur debt and issue bonds, and may call elections to submit the question of incurring debt to the taxpaying voters of the district, LRS 34:210. It may levy taxes to pay for bonds, and in default of payment may have property subject to said taxes sold at tax sale, LRS 34:211. It also has the power to examine and investigate all questions relating to the interest and welfare of the district, and it shall control and regulate the same* * * *, LRS 34:205.

Plaintiffs' main contention is that the Harbor District with its powers, as set forth above, directly affects them and their welfare, and the denial to them of any voice in the selection of the members of the Harbor District deprives them of equal protection of the laws as guaranteed to them by the 14th Amendment of the United States Constitution. Plaintiffs cite the case of *Avery v. Midland County* (1968), 390 U. S. 474; 88 Sup. Ct. 1114, to support this contention. The

*Avery* case is the latest expression of the "one man, one vote" principle set forth in *Reynolds v. Sims*, 84 Sup. Ct. 1362 (1964).

A petition of intervention was filed on behalf of most of the groups and organizations who, under the constitutional amendment in question, make the nominations to the governor. The governor and these intervenors maintain primarily that this method of selection is not contrary to the 14th Amendment and cite as their basic authority the case of *Sailors v. Board of Education of County of Kent* (1967), 387 U. S. 105; 87 Sup. Ct. 1549.

The Supreme Court in *Sailors* found that the method of selecting members to the Kent County Board of Education was appointive rather than elective and that the functions of the board were administrative rather than legislative. It was held that where these two factors are present, the principle of "one man, one vote" had no relevancy. The Court said:

> We find no constitutional reason why state or local officers of the *nonlegislative* character involved here may not be chosen by the governor, or by the legislature or by *some other appointive means* * * * *. (Emphasis supplied.)

Defendant and intervenors contend that *Sailors* is clear authority for the proposition that the power to levy ad valorem property taxes does not make a body legislative in character. The County School Board in question was recognized as having the power to levy taxes, but the only mention of this power was in a footnote (87 Sup. Ct. 1549 at 1553, footnote 7), where its powers were enumerated. One of the enumerated powers was the preparation of an annual budget and levy of taxes,

and Michigan Statutes Annotated, 15:3298(1) is cited as authority therefor. This statute, however, does not actually give the school board the same taxing powers as the Harbor District possesses under LRS 34:209. All the school board may do is submit its budget to the tax allocation board of the county. The tax allocation board allocates the tax rates in accordance with certain guidelines set out by statute. It is the county tax allocation board rather than the school board that allocates the tax rates. See Michigan Statutes Annotated, 15:3298(1) and 7:65, et seq.

Counsel for defendant and intervenors maintain that the later case of *Avery*, relied upon by plaintiffs, is consistent [with] *Sailors*. This court agrees. In fact, it was obvious Midland County was attempting to persuade the court to apply its *Sailors* rule to it. The Court was urged to permit an unequal distribution for the Midland County Commissioners Court on the ground that the court's function was not sufficiently "legislative." Much effort was expended in urging that alternative labels, "administrative" versus "legislative," be applied to the Commissioners Court.

In discussing this difference the Court used the following language which is most useful as a guide to determine what are legislative duties, to-wit:

> * * * * the court does have power to make a large number of decisions having a broad range of impact on all the citizens of the county. It sets a *tax rate*, equalizes assessments and *issues bonds** * * *. (Emphasis supplied.)

The court found that the commissioners court was a legislative body, and said:

> Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area may not be apportioned among single-member districts of substantial unequal population.

This court is, therefore, obliged to decide whether the Harbor District is purely an *"administrative"* body so as to come under the rule of *Sailors* or whether said Harbor District is a body possessing "general governmental powers over an entire geographic area" so as to come under the rule of *Avery* and *Reynolds*. If the rule of *Avery* is applicable, then in addition the court must decide whether the selective process set forth in the Louisiana constitutional amendment is arbitrary or invidious to the extent that it denies plaintiffs equal protection of the laws. The Supreme Court in *Avery* said:

> The equal protection clause does not, of course, require that a State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious.

It is obvious to the court that the Harbor District is more than an administrative body. Its powers are very broad, however they are not as far reaching as the powers vested in a police jury, city council, or other local governing authority.

The Harbor District has power to levy ad valorem taxes on all property situated within the district to the extent of two and a half mills, LRS 34:209. This is definitely a power which the Kent County Board of Education did not possess. The Harbor District also has sweeping powers, as set forth in

LTS 34:205, to examine and investigate all questions relating to the interest and welfare of the district and to control and regulate the same.

It is curious that the Louisiana constitutional provision, Art. 6, Sec. 69, which set up the Greater Baton Rouge Port Commission denied to that commission the right to levy an ad valorem tax.

The Caddo-Bossier Parish Port Commission, Art. 6, Sec. 32 of the Louisiana Constitution may levy an ad valorem tax, but only after a tax election so authorizes. The same restriction applies to the Lake Providence Port Commission, Art. 6, Sec. 33; the Concordia Parish Port Commission, Art 6, Sec. 34; the Avoyelles Parish Port Commission, Art. 6, Sec. 35, and the Rapides Parish Port Commission, Art. 6, Sec. 36.1. The South Louisiana Port Commission, Art. 6, Sec. 33.1 of the Louisiana Constitution may not levy ad valorem taxes.

The Harbor District's power to levy taxes without the necessity of approval of the voters, together with its other powers, in this court's opinion removes it from the *Sailors* rule. It is clearly somewhere in between an administrative body and a general governmental body. It comes closer to being the latter, however, because its powers to levy ad valorem taxes and issue bonds are clearly legislative powers.

Having concluded that the Harbor District is more of a legislative than an administrative body, this court is without precedent from the Supreme Court because in *Sailors* that Court said:

> We need not decide at the present time whether a

> state may constitute a local legislative body through the appointive rather than the elective process * * * *.

Since the ruling of *Sailors* is not applicable to the case at bar, it must now be decided whether the selective process of the constitutional amendment in question is so arbitrary and invidious as to deny plaintiffs equal protection of the laws.

The answer must be in the affirmative. These plaintiffs, and the class they represent, have absolutely no choice in the selection of the board members who have the right to tax them. This is indeed taxation without representation. Four of the five members are selected from a panel of names submitted by private organizations completely beyond and immune to the elective process. The governor who makes the final selection does not even have a choice. He must select one from the panel submitted by the nominating groups.

As correctly stated in learned counsel for plaintiffs' brief, the admonition against "taxation without consent" is reposed in our Declaration of Independence. It is one of the cornerstones upon which our great republic was built. Any system or plan, no matter how benevolent it may seem, which would deprive a qualified taxpayer of his right to a voice in the selection of those who are to impose taxes upon him must be looked upon with suspicion. To do otherwise seriously impairs a citizen's and taxpayer's right to equal protection of the laws.

Accordingly, this court holds that to deprive these plaintiffs, and the class they represent, of the right to participate in the selection of the Board of Commissioners of the Lake Charles Harbor and Terminal District violates the 14th Amend-

ment of the Constitution of the United States because plaintiffs have been denied equal protection of the laws, and Article 14, Section 30.2(B) of the Louisiana Constitution is unconstitutional.

For the reasons assigned, there is judgment herein in favor of plaintiffs and against the defendant, John J. McKeithen, Governor of the State of Louisiana, permanently restraining, enjoining and prohibiting him from making an appointment to the Lake Charles Harbor and Terminal District under any authority derived from the provisions of Article 14, Section 30.2(B) of the Constitution of the State of Louisiana.

Defendant's exception of no cause of action is overruled.

Judgment will be signed accordingly.

February 26, 1969

MELVIN A. SHORTESS, Judge

FILED
Feb. 26, 1969

GLADYS C. HEARNE
Dy. Clerk of Court

# OPINION OF THE LOUISIANA SUPREME COURT

SUPREME COURT OF LOUISIANA

**No. 49,762**

EDMOND J. HAMILTON, ET AL

VS.

JOHN J. McKEITHEN, GOVERNOR

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On Appeal from the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana. Honorable Melvin A. Shortess, Judge.

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HAMLIN, Justice:

John J. McKeithen, Governor of the State of Louisiana, American Rice Growers Cooperative Association at Lake Charles, Louisiana, the Lake Charles Maritime Association, the Greater Lake Charles Chamber of Commerce, the West Calcasieu Chamber of Commerce, Jesse M. Knowles, A. C. Clemons, Jr., Harry M. Hollins, Robert G. Jones, William L. McLeod, Jr., William S. Boyd, and Conway LeBleu devolutively appeal from a final judgment of the trial court, March 12, 1969, which permanently restrained, enjoined, and prohibited John J. McKeithen, Governor of the State of Louisiana (hereinafter referred to as Governor McKeithen), from making an appointment to the Board of Commissioners of the

Lake Charles Harbor and Terminal District under any authority derived from the provisions of Art. XIV, Sec. 30.2(B), La. Const. of 1921, and overruled an exception of no cause of action filed by defendant.[1]

The trial court declared Art. XIV, Sec. 30.2(B), La. Const. of 1921, unconstitutional, stating in reasons for judgment, "Accordingly, this court holds that to deprive these plaintiffs, and the class they represent, of the right to participate in the selection of the Board of Commissioners of the Lake Charles Harbor and Terminal District violates the 14th Amendment of the Constitution of the United States because plaintiffs have been denied equal protection of the laws, and Article 14, Section 30.2(B) of the Louisiana Constitution is unconstitutional."

Act 708, a joint resolution proposing an amendment to Sec. 30.2 of Art. XIV of the Constitution to provide with respect to the membership and the appointment of the Members of the Board of Commissioners of the Lake Charles Harbor and Terminal District, was enacted during the 1968 Session of the Louisiana State Legislature. The amendment was submitted to the electors for their approval or rejection, and, after approval, was adopted as law November 5, 1968 and duly promulgated December 14, 1968. Art. XIV, Sec. 30.2(B) recites:

> "The governing authority of this district shall be a board of commissioners whose members shall be appointed

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[1] It was stipulated among counsel for plaintiffs, defendant, and intervenors that with the agreement of the trial court that this case be heard on the question of the permanent injunction in order that a definitive judgment might be rendered as a result of the hearing. The peremptory exception of no cause of action was referred to the merits.

by the governor and which shall be known as the Board of Commissioners of Lake Charles Harbor and Terminal District. The board shall consist of five members who shall be citizens of the United States and qualified voters and taxpayers, and inhabitants of said district during their terms of office. The commissioners shall serve overlapping terms, as established by Act No. 67 of 1924, of six years each. The present members shall continue to serve on the board for the duration of their respective terms. Any vacancies in the membership of the board hereafter occurring by reason of expiration of the terms for which appointed, or by reason of death, resignation or otherwise shall be filled in the following manner:

"(1). The first vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the central office of the American Rice Growers Cooperative Association of Lake Charles, Louisiana.

"(2) The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Lake Charles and Vicinity Central Trades & Labor Council, AFL-CIO, as one organization.

"(3) The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Lake Charles Maritime Association.

"(4) The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nomi-

nees submitted to the governor by the Greater Lake Charles Chamber of Commerce, and the West Calcasieu Chamber of Commerce acting as one organization.

"(5) The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees to the governor by the state senators and representatives in the legislature representing the parish of Calcasieu.

"(6) Any further vacancies shall be filled in the same order of rotation as shown in subsections (1) through (5) of Section B hereof.

"(7) If now, or hereafter, one or more of the five organizations or groups set forth above has no commissioner on the board, the governor, the board, and the five organizations shall proceed to rectify this failure of representation of one or more groups by diverting, in case of a vacancy, from the order of appointments named hereinabove and by receiving nominations instead from the unrepresented organizations or groups, and then thereafter, shall revert to the order of nominations and appointments, as set forth in sub-paragraphs (1) through (5) above. If more than one of the five organizations are unrepresented on the board, priorities shall be in the order of rotation as shown in sub-paragraphs (1) through (5) above, with the American Rice Growers Cooperative Association having first priority in submitting nominees to the governor, the Lake Charles and Vicinity Central Trades & Labor Council, AFL-CIO shall have second priority, the Lake Charles Maritime Association shall have third priority, the Greater Lake Charles Chamber of Commerce and the West

Calcasieu Chamber of Commerce acting as one organization shall have fourth priority, and the Louisiana Legislators representing Calcasieu Parish shall have fifth priority. It is the intention of this language that the purpose of providing one commissioner for each organization shall be corrected and rectified at the earliest possible date, and at the time of the earliest possible vacancy. To facilitate this transition each of the five organizations shall, within 30 days after the promulgation of this amendment, notify both the governor and the board of commissioners whether it has, or has not been provided with a commissioner on the effective date of this amendment, with the name of such commissioner if it has one; and if it has none, it shall so certify such fact to the governor and to the board of commissioners.

"(8) The organizations referred to in Subsection B above shall be understood and construed to be the five organizations presently existing in the city of Lake Charles by the designated names, or their respective legal successors.

"(9) If any one or more of the organizations referred to in Subsection B hereof ceases to exist or to function without any legal successor, then the nominees to be submitted to the governor by such organization shall instead be submitted by the state senators and representatives representing the parish of Calcasieu.

"(10) In the event that for any reason the governor fails to receive three nominees for a given vacancy, as provided in Subsection B above, within sixty days after the expiration of the term of any member of the board or the occurrence of a vacancy on the board from any other cause, the governor

shall proceed forthwith to make an appointment to fill such vacancy. The organization failing to submit such nominees shall lose its turn in the rotation.

"(11) Any commissioner may be removed by the governor, but only for cause and on charges preferred against him in writing and after public hearing and proof of the sufficiency of such charges; provided that any commissioner so removed shall have the right to test in the courts the sufficiency of the charges and of the evidence tendered in support thereof.

"(12) The commissioners shall serve without compensation and shall have the power to organize and reorganize legal, executive, engineering, clerical and other departments and forces of the said board and to fixe the duties, powers and compensation of all officers, agents and employees of said board."

As residents, citizens and taxpayers of the Parish of Calcasieu residing within the territorial limits of the Lake Charles Harbor and Terminal District, plaintiffs filed a petition for injunction on December 30, 1968. They alleged that the term of office of a Member of the Board of Commissioners of the Lake Charles Harbor and Terminal District (hereinafter referred to as the Harbor District) had expired, and that under the constitutional amendment supra Governor McKeithen had to pick a new Board Member of said Harbor District from a list of three nominees submitted to him by the Central Office of The American Rice Growers Cooperative Association at Lake Charles, Louisiana, a private membership organization. Mainly they contended that the Harbor District with its powers, as set forth infra, directly affected them and their welfare, and that the denial to them of any voice in the selection of

members deprived them of equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the United States Constitution. Pertinent allegations of their petition recite:

> "The plaintiff[s] has absolutely no voice or choice in the selection of the nominees who are named by The American Rice Growers Cooperative Association at Lake Charles, Louisiana, or the other private membership organizations listed in said Constitutional Amendment of which he is not a member, and from which nominees the Governor must select a member of the Board of Commissioners of the Lake Charles Harbor and Terminal District to spend the taxes paid by the plaintiff[s] and others and to administer the affairs of the District.
>
> "Said Constitutional Amendment involves a Constitutional agency empowered to levy, and actually levying property taxes upon residents and taxpayers living within the area of the District to provide construction of essential facilities, and for the operation and maintenance of these facilities, and neither the American Rice Growers Cooperative Association at Lake Charles, Louisiana nor the other private organizations represent a political group of any mind, or a group authorized by the Constitution and laws of the United States and the State of Louisiana to exercise any kind of public functions, directly or indirectly; and that for these reasons and other reasons shown below, said Constitutional Amendment is illegal and unconstitutional in denying to plaintiff and other taxpayers similarly situated the due process and equal protection which is insured by Constitution of the United States (particularly, the Fourteenth Amendment thereto), and the Constitution of the State of Louisiana.
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> "That plainly the Constitutional Amendment completely deprives the plaintiff and others similarly situated

of any voice, or in the alternative, of an equal voice in the picking of the nominees, as was true under the Constitution and laws of the State of Louisiana prior to the enactment of said Constitutional Amendment, and actually amounts to taxation of the plaintiff without representation, and/or in the alternative, without equal representation."

Answering plaintiffs' petition on January 13, 1969, Governor McKeithen denied the allegations with respect to the unconstitutionality of the constitutional amendment; he asserted the amendment's constitutionality and prayed for the dismissal of plaintiffs' suit. Peremptory exceptions of nonjoinder of indispenable parties and no cause of action were also filed on January 13, 1969.

On January 13, 1969, The American Rice Growers Cooperative Association at Lake Charles, Louisiana, the Lake Charles Maritime Association, the Greater Lake Charles Chamber of Commerce, the West Calcasieu Chamber of Commerce, Jessie M. Knowles, A. C. Clemons, Jr., Harry M. Hollins, Robert G. Jones, William L. McLeod, Jr.; William S. Boyd, and Conway LeBleu filed an intervention asserting the constitutionality of Sec. 30.2(B) and praying for the dismissal of plaintiffs' suit.

The trial court rendered judgment in favor of plaintiffs and against defendant and intervenors. It found that the Harbor District was more than an administrative body. It further found that the ruling of *Sailors v. Board of Education of County of Kent*, 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed. 2d 650, to the effect that there was no constitutional reason why state or local officers of the non-legislative character involved in that case might not be chosen by the Governor, by the Legis-

lature, or by some other appointive means rather than by election was not applicable. Herein, the trial court posed the question of whether the selective process of the constitutional amendment in question is so arbitrary and invidious as to deny plaintiffs equal protection of the laws. It stated:

> "The answer must be in the affirmative. These plaintiffs, and the class they represent, have absolutely no choice in the selection of the board members who have the right to tax them. This is indeed taxation without representation. Four of the five members are selected from a panel of names submitted by private organizations completely beyond and immune to the elective process. The governor who makes the final selection does not even have a choice. He must select one from the panel submitted by the nominating groups."

As stated supra, the trial court held that Sec. 30.2(B) was unconstitutional and granted plaintiffs the relief prayed for.

Defendant assigns the following errors to the judgment of the trial court:

> "1. The trial judge erred in holding that the provisions of Article 14, Section 30.2(B) of the Louisiana Constitution were unconstitutional under the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.
>
> "2. The trial judge erred in enjoining the Governor from making any appointment to the Board of Commissioners of the Lake Charles Harbor and Terminal District under an authority derived from Article 14, Section 30.2(B) of the Louisiana Constitution.

"3. In the alternative, and only if this honorable court should conclude that the trial judge did not err in the decisions complained of above, then the trial judge erred in failing to specifically order that the members of the Board of Commissioners of the Lake Charles Harbor and Terminal District be chosen by election and in failing to establish guidelines to be followed by the Legislature of Louisiana in providing for such elections."

Posed for our determination is the question of whether plaintiffs are deprived of equal protection of the laws by Governor McKeithen's appointment—such power of appointment having been vested in him by the Legislature and by the electors of the State—of Members of the Board of Commissioners of the Harbor District rather than by having the members elected by the district's qualified electorate.

The Harbor District was created by Act No. 67 of 1924 as a political subdivision of the State of Louisiana with fixed territorial limits. LSA-R.S. 34:201. The governing authority of the Harbor District is vested in a Board of Commissioners, and the method of selection of the Board is that set forth in Art. XIV, Sec. 30.2(B), La. Const. of 1921, the constitutional amendment in question. The Board may regulate the commerce and traffic of the Harbor District. "* * * it may provide light, water and police protection for the district and for all harbor and terminal facilities situated therein; it may make and collect reasonable charges for the use of all structures, works and facilities administered by the board, and for any and all services rendered by it; it may regulate, reasonably, the fees and charges to be made by privately owned wharves, docks, warehouses, elevators and other facilities within the limits of the district when the same are offered for the use

of the public; it may borrow funds for the business of the district; it may levy and collect taxes; it may mortgage properties constructed or acquired by the district and it may mortgage and pledge any lease or leases and the rents, income and other advantages arising out of any lease or leases granted, assigned or subleased by it; it may incur debt and issue bonds for its needs in the manner provided by the Constitution and laws of the State of Louisiana, including, but not by way of limitation, Article XIV, Section 14, paragraph (b.2) and Article XIV, Section 31 of the Constitution." LSA-R.S. 34:203. See, Wright v. Lake Charles Harbor and Terminal Dist., 188 So.2d 449, 249 La. 620, 188 So.2d 922. The Board shall control and regulate the exports and imports passing through the port district and the number of arrivals and departures of vessels and their tonnage. LSA-R.S. 34:205. "The board may acquire by purchase, donation, expropriation, lease or otherwise, any and all lands in the district needed for railways, warehouses, docks, wharves, sheds, buildings, canals, channels, slips, basins and other facilities to be owned and operated by the board or to lease to others for manufacturing, commercial and business purposes to promote the industrial development of the district and it may provide for the payment of such land out of the funds under its control not otherwise specially appropriated." LSA-R.S. 34:206. The Board may make or construct any of the works of public improvement in the district and anything in connection therewith that may be necessary or useful for the business of the Board. LSA-R.S. 34:207. The Board may let contracts. LSA-R.S. 34:208. "The board may, when necessary, levy annually an ad valorem tax not to exceed two and one-half mills on the dollar on the property subject to taxation situated in the district. All funds derived under this Section may be used for any expenses or purposes of the

board." LSA-R.S. 34:209. The Board has the right to borrow money and issue certificates of indebtedness. LSA-R.S. 34:-209. The Board is authorized to incur debt and issue negotiable bonds. LSA-R.S. 34:210. The Board may levy taxes to pay for bonds, and in default of payment may have property subject to said taxes sold at tax sale. LSA-R.S. 34:211. The Board may issue refunding bonds. LSA-R.S. 34:214. "The board shall examine and investigate all questions relating to the interest and welfare of the district; it shall control and regulate the same, and make an annual report to the governor showing all receipts and disbursements of the board." LSA-R.S. 34:205.

Reason dictates that the word "district" employed in Part II, Ports and Harbors, Lake Charles Harbor and Terminal District, LSA-R.S. 34:201-34:241, refers and applies to the Lake Charles Harbor and Terminal District and not to any other political subdivision.[2]

Act 67 of 1924 stated that it was, "Creating the Lake Charles Harbor and Terminal District; establishing a Board of Commissioners therefor; defining their powers, jurisdiction and duties; providing revenue therefor; authorizing said Commission to levy taxes, to incur debt, and to issue bonds for works of public improvements; title to all of which shall be in the public and for public purposes in said District and generally to do any and all things necessary or proper for the government, regulation, development and control of the business of said district and repealing conflicting laws. Due notice

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[2] Argument was made in this Court by counsel for plaintiffs that the powers granted to the Harbor District were not confined to such district.

of the intention to introduce this act in the Legislature having been published as required by Section 6 of Article IV of the Constitution and evidence of said publication exhibited to the Legislature."

Act 67 of 1924 was enacted by the Legislature, and the members thereof were duly elected by the electors of the State, which electorate included electors from the Harbor District. The Act had a single and special purpose. It created a political subdivision and also created a Board to direct, operate, and govern such subdivision. The subdivision was not strictly a geographical unit; it merely had territorial limits.

We find that the original enactment of the Legislature creating the Harbor District meets the following test set forth by the United States Supreme Court in Reynolds v. Sims, 377 U. S. 533, 84 S.Ct. 1362, 1383, 12 L.Ed.2d 506 (1964):

> "But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen has an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less."

Differently from the trial judge, we find that the Harbor District is an administrative body and that its Board of Com-

missioners possesses in the greatest part administrative powers. The power to tax is a limited power and is restricted.

With modernization and transition, port facilities have created great problems in recent years. Their administration is of great import. Therefore, in 1968, the Legislature saw fit to enact a constitutional amendment, Art. XIV, Sec. 30.2(B), supra, providing for what it thought was an efficient means of appointment of the Board of Commissioners of the Harbor District. The appointments by the Governor are from divergent groups all representative of the business and industry of the Harbor District. The fact that the Governor must select at intervals one of three names submitted to him evidences a sense of fairness to the representative groups. The fact that appointments are spaced over a period of years also evidences a sense of fairness in that each group receives its turn for representation. We find that the groups named by the Legislature are inclusive and not discriminatory and that their composition is embracing of those interests vital to the progress and continuance of the Harbor District.

As stated supra, the instant constitutional amendment was voted on by the electorate of the Harbor District; they voiced their approval. Under such circumstances, we find no denial of equal protection of the laws. We find no deprivation of the right to vote for those who administer the Harbor District's business.

We conclude that the case of Sailors v. Board of Education of County of Kent, 387 U. S. 105, 87 S.Ct. 1549, 18 L.Ed. 2d 650, is applicable to the instant matter. In that case, the United States Supreme Court stated, "We find no constitu-

tional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election."[3]

We do not find that this matter concerns the "one man-one vote" rule. It does not concern apportionment. The case of Avery v. Midland County, Texas, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed. 2d 45, is therefore neither applicable nor apposite. That case involved the selection of Members of the Midland County Commissioners Court. After reviewing the matter in the light of Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506, supra, the United States Supreme Court held that plaintiff, as a resident of Midland County, had a right to a vote for the Commissioners Court of substantially equal weight to the vote of every other resident. It held that the selection of Members of the Court from single-member districts of substantially unequal population violated the Fourteenth Amendment to the United States Constitution. The

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[3] In the Sailors Case, plaintiffs sought to enjoin the Board of Education of Kent County from detaching certain schools from the City of Grand Rapids and attaching them to Kent County. They also sought to have the county board declared unconstitutionally constituted and to enjoin further elections until the electoral system was redesigned. The people of Michigan (qualified school electors) elected the local school boards. Each board sent a delegate to a biennial meeting, and the delegates elected a county board of five members, who needed not be members of the local boards, from candidates nominated by school electors. Among their powers, the county board had taxing powers. The United States Supreme Court upheld the manner of selecting the county boards, stating, "* * * For while there was an election here for the local school board, no constitutional complaint is raised respecting that election. Since the choice of members of the county school board did not involve an election and since none was required for these non-legislative offices, the principle of 'one man-one vote' has no relevancy."

Court further held that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body. As found supra, such issues are not herein involved.

We find no invidious distinctions in the constitutional amendment under consideration. Invidious distinctions cannot be enacted without a violation of the Equal Protection Clause, but after considering the facts and circumstances of the amendment, the interests which the State is protecting, and the interests of the plaintiffs, we do not find that plaintiffs are suffering taxation without representation or are deprived of equal protection of the laws because they do not have a direct vote for Members of the Board of Commissioners of the Harbor District. Williams v. Rhodes, _____ U.S. _____, 89 S.Ct. 5, _____ L.Ed. 2d _____. CF. Cox v. State of Louisiana, 85 S.Ct. 453, 379 U.S. 536, 13 L.Ed2d 471; Robertson v. Ott, 284 F.Supp. 735.

"The burden of establishing the unconstitutionality of a statute rests upon the party who assails it. Thus, one who attacks the limited territorial scope or the classification of a statute has the burden of establishing that the restriction imposed by the Legislature has no rational basis. For the Court to nullify the statute, the record must show that no fair reason supports the legislative judgment." State v. Guidry, 247 La. 631, 173 So.2d 192. See, Francis v. Louisiana State Livestock Sanitary Bd., 184 So.2d 247, 249 La. 453, 187 So.2d 439. Herein, we do not find that plaintiffs have borne their burden of proving the unconstitutionality of the constitutional amendment; they have not shown that the selective process of appoint-

must to the Board of Commissioners of the Harbor District by Governor McKeithen has no rational basis.

In conclusion, we find that Art. XIV, Sec. 30.2(B), La. Const. of 1921, is constitutional. Plaintiffs have suffered neither discrimination nor denial of equal protection of the laws.

For the reasons assigned, the judgment of the trial court is reversed and set aside. Plaintiffs' suit is dismissed at their costs.

## ARTICLE XIV, SECTION 30.2(B) OF THE LOUISIANA CONSTITUTION OF 1921

§ 30.2 Lake Charles Harbor and Terminal District; ratification; Board of Commissioners, members, officers, agents and employees

Section 30.2 A. Ratification of Law. The Act passed by the Legislature of 1924 creating the Lake Charles Harbor and Terminal District shall be deemed and held to be ratified, confirmed and put into operation by the adoption of this Constitutional Amendment in the manner provided by law.

B. The governing authority of this district shall be a board of commissioners whose members shall be appointed by the governor and which shall be known as the Board of Commissioners of Lake Charles Harbor and Terminal District. The board shall consist of five members who shall be citizens of the United States and qualified voters and taxpayers, and inhabitants of said district during their terms of office. The commissioners shall serve overlapping terms, as established by Act No. 67 of 1924, of six years each. The present members shall continue to serve on the board for the duration of their respective terms. Any vacancies in the membership of the board hereafter occurring by reason of expiration of the terms for which appointed, or by reason of death, resignation or otherwise shall be filled in the following manner:

(1). The first vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the central office of the American Rice Growers Cooperative Association at Lake Charles, Louisiana.

(2). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Lake Charles and Vicinity Central Trades & Labor Council, AFL-CIO, as one organization.

(3). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Lake Charles Maritime Association.

(4). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the Greater Lake Charles Chamber of Commerce, and the West Calcasieu Chamber of Commerce acting as one organization.

(5). The next vacancy on the board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of three nominees submitted to the governor by the state senators and representatives in the legislature representing the parish of Calcasieu.

(6). Any further vacancies shall be filled in the same order of rotation as shown in subsections (1) through (5) of Section B hereof.

(7). If now, or hereafter, one or more of the five organizations or groups set forth above has no commissioner on the board, the governor, the board, and the five organizations shall proceed to rectify this failure of representation of one or more groups by diverting, in case of a vacancy, from the

order of appointments named hereinabove and by receiving nominations instead from the unrepresented organizations or groups, and then thereafter, shall revert to the order of nominations and appointments, as set forth in sub-paragraphs (1) through (5) above. If more than one of the five organizations are unrepresented on the board, priorities shall be in the order of rotation as shown in sub-paragraphs (1) through (5) above, with the American Rice Growers Cooperative Association having first priority in submitting nominees to the governor, the Lake Charles and Vicinity Central Trades & Labor Council, AFL-CIO shall have second priority, the Lake Charles Maritime Association shall have third priority, the Greater Lake Charles Chamber of Commerce and the West Calcasieu Chamber of Commerce acting as one organization shall have fourth priority, and the Louisiana Legislators representing Calcasieu Parish shall have fifth priority. It is the intention of this language that the purpose of providing one commissioner for each organization shall be corrected and rectified at the earliest possible date, and at the time of the earliest possible vacancy. To facilitate this transition each of the five organizations shall, within 30 days after the promulgation of this amendment, notify both the governor and the board of commissioners whether it has, or has not been provided with a commissioner on the effective date of this amendment, with the name of such commissioner if it has one; and if it has none, it shall so certify such fact to the governor and to the board of commissioners.

(8). The organizations referred to in Subsection B above shall be understood and construed to be the five organizations presently existing in the city of Lake Charles by the designated names, or their respective legal successors.

(9). If any one or more of the organizations referred to in Subsection B hereof ceases to exist or to function without any legal successor, then the nominees to be submitted to the governor by such organization shall instead be submitted by the state senators and representatives representing the parish of Calcasieu.

(10). In the event that for any reason the governor fails to receive three nominees for a given vacancy, as provided in Subsection B above, within sixty days after the expiration of the term of any member of the board or the occurrence of a vacancy on the board from any other cause, the governor shall proceed forthwith to make an appointment to fill such vacancy. The organization failing to submit such nominees shall lose its turn in the rotation.

(11). Any commissioner may be removed by the governor, but only for cause and on charges preferred against him in writing and after public hearing and proof of the sufficiency of such charges; provided that any commissioner so removed shall have the right to test in the courts the sufficiency of the charges and of the evidence tendered in support thereof.

(12). The commissioners shall serve without compensation and shall have the power to organize and reorganize legal, executive, engineering, clerical and other departments and forces of the said board and to fix the duties, powers and compensation of all officers, agents and employees of said board. (Amended by Acts 1968, No. 708, adopted Nov. 5, 1968.)

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

No. 1046

EDMOND J. HAMILTON and JOHN L. DATENHOFF,
*Appellants,*

v.

JOHN J. McKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA, *Appellee,*

AMERICAN RICE GROWERS COOPERATIVE ASSOCIATION, LAKE CHARLES MARITIME ASSOCIATION, GREATER LAKE CHARLES CHAMBER OF COMMERCE, WEST CALCASIEU CHAMBER OF COMMERCE, JESSE M. KNOWLES, A. C. CLEMONS, JR., HARRY M. HOLLINS, ROBERT G. JONES, WILLIAM L. McLEOD, JR., WILLIAM S. BOYD, and CONWAY LEBLEU, *Intervenors-Appellees.*

**On Appeal From the Supreme Court of the State of Louisiana**

## MOTION TO DISMISS OR AFFIRM

SAM H. JONES, Esq.
Post Office Box 910
Gulf National Bank Building
Lake Charles, Louisiana 70601
and
G. ALLEN KIMBALL, Esq.
*Of Counsel for John J. McKeithen, Governor of the State of Louisiana, Defendant-Appellee, and American Rice Growers Cooperative Association, Intervenor-Appellee*

JACK P. F. GREMILLION,
Attorney General
KENNETH C. DEJEAN,
Special Counsel
WILLIE D. MAYNOR,
Special Counsel
*Attorneys for Defendant-Appellee, John J. McKeithen, Governor*

THOMAS M. BERGSTEDT
*Attorney for Intervenor-Appellee, West Calcasieu Chamber of Commerce*

WILLIAM M. NOLEN
*Attorney for Intervenor-Appellee, American Rice Growers Cooperative Association*

EVERETT R. SCOTT, JR.
*Attorney for Intervenor-Appellee, Lake Charles Maritime Association*

THOMAS L. RAGGIO
*Attorney for Intervenor-Appellee, Greater Lake Charles Chamber of Commerce*

MEREDITH T. HOLT, for
HOLT & WOODLEY
*Attorneys for Intervenors-Appellees, Jesse M. Knowles, A. C. Clemons, Jr., Harry M. Hollins, Robert G. Jones, William L. McLeod, Jr., William S. Boyd and Conway LeBleu*

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